



8990 Burke Lake Road, 2nd Floor, Burke, VA 22015 Tel: 703-764-9850 Fax: 703-764-1234 E-mail: info@asbdc-us.org

COMMENT

CG Docket No. 02-278

In the Matter of Rules and Regulations Implementing
the Telephone Consumer Protection Act of 1991

August 7, 2003

Members of the Commission
Federal Communications Commission
Washington, DC 20554

Dear Sirs and Madam:

I am writing to comment on the new rule governing unsolicited facsimile advertisements as it applies to nonprofit, voluntary associations communicating with their own members. The new rule is published in the Report and Order of the Federal Communications Commission adopted on June 26, 2003, in the Matter of the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 published in the *Federal Register* of July 25, 2003, with an effective date of August 25, 2003.

I believe that the Commission's new rule governing unsolicited facsimile advertisements will unnecessarily and inappropriately impede communication between nonprofit, voluntary associations and their members, and will cause association members to be denied information that is integral to the purpose for which they joined the association. The Commission's new rule should not apply to unsolicited facsimile advertisements sent by a nonprofit, voluntary association to its own members.

The Telephone Consumer Protection Act of 1991 prohibits sending an unsolicited facsimile advertisement to any person without that person's prior express invitation or permission, and the Act defines "unsolicited advertisement" as any material advertising the commercial availability or quality of any property, goods or services. In its Report of June 26, the Commission revised its current rules and adopted a new rule requiring that "prior express invitation or permission" must be in the form of a signed, written statement.

As the Commission stated in its Report, "Congress determined that **companies** that wish to fax unsolicited advertisements to **customers** must obtain their express permission to do so before transmitting any faxes to them." [emphasis added] (See *Fed. Reg.*, July 25, 2003, p. 44168).

Clearly, the Commission understands that the Telephone Consumer Protection Act is intended to protect **customers** from unsolicited facsimile advertisements sent by **companies** for commercial purposes. Surely Congress did not intend in the Telephone Consumer Protection Act to interfere with communications between **members** and their **nonprofit, voluntary associations**. A facsimile advertisement from a non-profit, voluntary association to its members is different from a facsimile advertisement from a company to customers, and a facsimile advertisement from a nonprofit, voluntary association to its members should not be governed by the Commission's Report of June 26.

First, the primary intent of a customer in buying goods or services from a company may not be to consent to receiving unsolicited fax advertisements. In contrast, a primary intent of a member in joining a nonprofit, voluntary association is to be kept informed by the association of all matters relating to the association's work. Membership in a nonprofit, voluntary association clearly indicates prior express invitation or permission from the member for his or her association to send an advertisement.

Secondly, the primary purpose of a facsimile advertisement from a company to a customer is normally commercial. In contrast, the primary purpose of a facsimile advertisement from a nonprofit, voluntary association to its members is to inform the association's members about the activities of their association. This is true even in the case where the nonprofit, voluntary association may derive some income from the activity being advertised to its members.

For example, if a nonprofit, voluntary association plans to hold a professional development conference for its members, the members of the association will expect to be informed of that conference, and the association likewise has the responsibility to inform its members about the conference. Far from objecting to receiving a facsimile advertisement about the conference, the association's members would object if they did not receive such notification of the conference. By joining a nonprofit, voluntary association, members express their prior express invitation or permission (indeed, intent and expectation) for their association to keep them informed about association activities. And even if the nonprofit, voluntary association may derive some income from the conference, the association's primary purpose in advertising the conference to its members is to keep its members informed about important association activities. Its purpose is not commercial.

The Commission's new rule requiring that "prior express invitation or permission" to send an unsolicited facsimile advertisement must be in the form of a signed, written statement, will unnecessarily and inappropriately interfere with a nonprofit, voluntary association's ability to communicate with its members. I urge the Commission to reconsider the application of this new rule to unsolicited facsimile advertisements sent by a nonprofit, voluntary association to its own members.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Wilson". The signature is written in a cursive, flowing style with a small flourish at the end.

Donald Wilson
President